



# Certified Recommendation

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City of Raleigh Planning Commission

## Case Information: TC-2-19 Design Adjustments

### Comprehensive Plan Guidance

<i>Applicable Policy Statements</i>	<b>Policy LU 5.2 Managing Commercial Development Impacts</b> Manage new commercial development using zoning regulations and through the conditional use zoning and development review processes so that it does not result in unreasonable and unexpected traffic, parking, litter, shadow, view obstruction, odor, noise and vibration impacts on surrounding residential areas.
	<b>Policy T 1.5 Context Sensitive Road Design</b> "Context sensitive" approaches shall be used for new roadways or widening of existing roads to minimize impacts to historic business districts and neighborhoods and sensitive natural areas (particularly in watershed protection, conservation managements and metro park protection areas).
	<b>Policy T 1.6 Transportation Impacts</b> Identify and address transportation impacts before a development is implemented.
	<b>Policy T 2.16 Assessing Changes in Road Design</b> Subject all proposed changes to the treatment of existing vehicular right-of-way, such as changes to the number and type of travel lanes, to a study prior to implementation to determine the impacts on the larger network and the level of service of all relevant modes.
<i>Action Items</i>	<b>N/A</b>

### Summary of Text Change

<i>Summary</i>	The text change would require Board of Adjustment review for Design Adjustments to Chapter 8 standards in the UDO.
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### Summary of Impacts

<i>Impacts Identified</i>	The proposed text amendment would retain the standards currently found in Article 8 for evaluating design adjustment requests, such as block perimeter and other right-of-way adjustments. The Board of Adjustment (a quasi-judicial body) would make the decision on design adjustment requests after conducting a quasi-judicial hearing. The text amendment would also replace the word "may" with the word "shall" in the design adjustment standard. While this process may add cost and time to the development review process, the increase in public awareness and conformance with the law significantly outweigh these impacts.
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### Public Meetings

<i>Submitted</i>	<i>Committee</i>	<i>Planning Commission</i>
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5/14/19				
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Attachments: Draft Ordinance

## Planning Commission Recommendation

The text amendment is **Consistent** with the relevant policies in the Comprehensive Plan and **Approval** of the text amendment is reasonable and in the public interest.

<i>Consistency with the Comprehensive Plan</i>	
<i>Reasonableness and Public Interest</i>	
<i>Recommendation</i>	
<i>Motion and Vote</i>	

This document is a true and accurate statement of the findings and recommendations of the Planning Commission. Approval of this document incorporates all of the findings of the attached Staff Report.

\_\_\_\_\_  
Planning Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Planning Commission Chairperson

\_\_\_\_\_  
Date

Staff Coordinator: Mark Holland [Mark.Holland@raleighnc.gov](mailto:Mark.Holland@raleighnc.gov)



## Zoning Staff Report

### TC-2-19 Design Adjustments

<i>Section Reference</i>	<b>8.3, 8.4, 8.5, 10.1, 10.2</b>
<i>Basic Information</i>	This text change would require Board of Adjustment review for all Design Adjustments contained within chapter 8 of the UDO. Previously these adjustments were reviewed by staff.
<i>Planning Commission Recommendation Deadline</i>	August 12, 2019

### Comprehensive Plan Guidance

<i>Applicable Policies</i>	<p><b>Policy LU 5.2 Managing Commercial Development Impacts</b> Manage new commercial development using zoning regulations and through the conditional use zoning and development review processes so that it does not result in unreasonable and unexpected traffic, parking, litter, shadow, view obstruction, odor, noise and vibration impacts on surrounding residential areas.</p> <p><b>Policy T 1.5 Context Sensitive Road Design</b> “Context sensitive” approaches shall be used for new roadways or widening of existing roads to minimize impacts to historic business districts and neighborhoods and sensitive natural areas (particularly in watershed protection, conservation managements and metro park protection areas).</p> <p><b>Policy T 1.6 Transportation Impacts</b> Identify and address transportation impacts before a development is implemented.</p> <p><b>Policy T 2.16 Assessing Changes in Road Design</b> Subject all proposed changes to the treatment of existing vehicular right-of-way, such as changes to the number and type of travel lanes, to a study prior to implementation to determine the impacts on the larger network and the level of service of all relevant modes.</p>
<i>Action Items</i>	<b>N/A</b>

### Contact Information

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## History/Overview

When the UDO was adopted in 2013, a new suite of regulations regarding blocks, lots, access and streets were included in Article 8. These regulations apply to subdivisions and site plans. A new process known as “Design Adjustment” was also included in the UDO. The intent of this process was to allow, in certain circumstances, modification to the standards in Article 8, such as the requirements for minimum block perimeter, street right-of-way width or streetscape elements. The UDO currently provides that decisions regarding design adjustments are made by City staff. The UDO provides standards for considering design adjustments but provides that staff “may” approve a design adjustment, subject to those standards.

## Purpose and Need

The proposed text amendment would retain the standards found in Article 8 for evaluating Design Adjustment requests, but would provide that the Board of Adjustment makes the decision after conducting a quasi-judicial hearing. The text amendment would also replace the word “may” with the word “shall” in the design adjustment standard. The need for this text change was identified by staff in the City Attorney’s Office and City Planning, after a recent review of the Design Adjustment process. The existing language in the UDO provides an amount of discretion at the staff level that is more subjective than objective. Under state law, staff makes routine, nondiscretionary decisions regarding the application of the UDO. Decisions regarding subjective standards are quasi-judicial in nature, and are made by a quasi-judicial body (such as the Board of Adjustment). Again, this text change would maintain the structure and review standards of Design Adjustments, but an applicant would be required to affirmatively prove that the standards have been met in a quasi-judicial hearing at the Board of Adjustment.

## Alternatives Considered

This text change is intended to be a quick-fix, to provide applicants with an avenue to continue to seek design adjustments, while the City examines a longer-term solution. Staff is in the process of identifying potential long-term options to address Design Adjustments, which may include creating objective standards for administrative staff adjustments or providing for a quasi-judicial board to make adjustments using a quasi-judicial standard. Staff anticipates that these options will be explored in a collaborative manner with members of the development and design community. For the purpose of this immediate text change; however, there were no other alternatives explored.

## Scoping of Impacts

Based on the current UDO standard for Design Adjustments, City staff has stopped accepting applications for Design Adjustments from the provisions of Article 8. As a result, applicants do not currently have a method to request Design Adjustments. Instead, applicants may only ask for variances from the Board of Adjustment, utilizing the variance hardship standard. This text amendment would provide applicants with a method to continue to request Design Adjustments, utilizing the same standard previously applied by staff. This amendment would also provide that the Board of Adjustment shall grant the Design Adjustment when this standard is met.

If this text change is approved, staff has identified the following impacts that may arise:

1. Conformance with the law. The current language may allow staff to make decisions that can be viewed as subjective. When staff applies a code standard, it should be objective in nature. A quasi-judicial public hearing can provide an environment where experts can testify and prove that certain findings have been met.
2. Time. Increase in review time at the development plan stage. The Board of Adjustment application and review process typically takes two months. This can happen concurrently

during the development review process, although the development plan cannot be approved until the design adjustment has been decided.

3. Cost. Minimal increase in application cost to the applicant. Modest increase in cost if an attorney is engaged to represent the applicant at the Board of Adjustment. The BOA application fee is \$200.
4. Public awareness and participation. Increased public involvement in the requests. Mailed notice would be sent to property owners within 100 feet of the subject property. A sign would be posted, and a legal advertisement would be placed in the newspaper. Members of the public can attend and participate in the public hearing.

While the proposed text amendment may have an impact on the timing and cost associated with a development plan application, the benefit of conformance with the law outweighs these impacts.

## **Impacts Summary**

### **Adoption of Proposed Text Change**

Adoption of TC-2-19 will require Design Adjustment decisions to be made by a quasi-judicial body following a quasi-judicial hearing; which is more appropriate for this type of decision. While this process may add cost and time to the development review process, the increase in public awareness and conformance with the law significantly outweigh these impacts.

### **No Action**

The UDO does not currently identify the Board of Adjustment as a path to approval for Design Adjustments. If the text change is not approved, the process of Design Adjustment would not be available to applicants. Rather, an alteration to the street standards would be processed as a variance before the Board of Adjustment. While the venue would be the same, the standard for review as a variance would be a hardship standard.